CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 35 NOVEMBER 28, 2001 NO. 48

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decision

(T.D. 01–84)

RETRACTION OF REVOCATION OR CANCELLATION NOTICE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a list of revoked or cancelled Customs broker licenses.

Name	*License*	*Port Name*
Bruce K. Fong	06150	San Francisco
D.L. Bynum & Company, Inc.	12077	Houston
Perijo J. Bennett	14146	Baltimore
R. Wilbur Smith & Co., Inc.	04001	Houston

Customs broker licenses numbered 06150, 12077, 14146, and 04001 remain valid.

Dated: November 9, 2001.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, November 16, 2001 (66 FR 57775)]

U.S. Customs Service

General Notices

REMOTE LOCATION FILING: EXTENSION OF DEADLINE FOR CUSTOMS BROKERS TO SUBMIT NATIONAL PERMIT NUMBERS TO CUSTOMS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces a deadline extension for customs brokers participating in the remote location filing (RLF) prototype to submit national permit numbers to Customs. The original date by which customs brokers were required to submit this data to Customs Headquarters was November 6, 2001. Due to recent events that have disrupted mail service to Customs Headquarters, this date is being extended to December 6, 2001.

DATE: Customs brokers who are current participants in RLF must submit their national permit numbers to Customs on or before December 6, 2001.

ADDRESSES: Submissions of national permit numbers should be sent to Customs either via email to *Lisa.k.santana@customs.treas.gov* or via fax to (202) 927–1096 or, in the alternative, addressed to the Remote Location Filing Team, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Room 5.2–B, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Lisa Santana, (202) 927–4243 or via email at *Lisa.k.santana@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

BACKGROUND

RLF Authorized by the National Customs Automation Program (NCAP)

Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the processing of commercial imports. Within subpart B, section 631 of the Act adds section 414 (19

U.S.C. 1414), which provides for Remote Location Filing (RLF), to the Tariff Act of 1930, as amended. RLF permits an eligible NCAP participant to elect to electronically file a formal or informal consumption entry with Customs from a remote location within the Customs territory of the United States other than the port of arrival, or from within the port of arrival with a requested designated examination site outside the port of arrival.

RLF Prototype Two

In accordance with § 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), Customs has developed and tested two RLF prototypes.

RLF Prototype Two commenced on January 1, 1997. *See* document published in the Federal Register (61 FR 60749) on November 29, 1996. The RLF Prototype Two terms and conditions remain in effect except for those explicitly changed by a document published in the Federal Register on July 6, 2001 (66 FR 35693).

New Eligibility Criterion for Brokers Participating in RLF Prototype Two

One of the changes to RLF Prototype Two effected by the July 6, 2001, Federal Register document imposed a new eligibility criterion for participation in RLF. The eligibility criterion requires that licensed customs brokers who are current RLF participants must submit proof to Customs that they hold a national permit (*i.e.*, submission of the broker's national permit number). Failure to timely submit such proof to Customs will result in the automatic suspension of the broker's eligibility to participate in RLF. If suspended, a broker is precluded from electronically filing new entries from a remote location. If Customs receives delinquent submission of a national permit number from a broker whose suspension is in effect, Customs, after verification of the permit number, will notify the broker of the reinstatement date of the broker's right to participate in RLF; the broker will not need to reapply to participate in RLF.

The July 6, 2001, Federal Register document required that proof of the national permit be submitted to Customs by November 6, 2001, and failure to timely submit such proof to Customs by that date was to result in the automatic suspension of the broker's eligibility to participate in RLF, effective November 7, 2001.

It is noted that individuals who are otherwise eligible to participate in RLF, who are not customs brokers, are not required to hold a national broker permit.

Extension of Deadline to Submit Proof of National Permit to Customs

Subsequent to the publication of the July 6, 2001, Federal Register document, certain events have significantly disrupted mail service to Customs Headquarters. As a result, submissions of national permit numbers to Customs may be delinquent due to circumstances beyond the control of RLF participants. Accordingly, this document announces Customs decision to extend the deadline by which national permit num-

bers must be submitted to Customs to December 6, 2001. Failure to timely submit national permit numbers to Customs will result in the automatic suspension of the broker's eligibility to participate in RLF, effective December 7, 2001. All other terms and conditions pertaining to delinquent submissions and, where applicable, reinstatement, remain in effect as described above.

Resubmissions via email and fax encouraged

Mail service to Customs Headquarters has been suspended since October 21, 2001, and, as of the date of publication of this document, it is not certain when service will resume. For this reason, Customs urges those RLF participants who previously submitted national permit numbers to Customs Headquarters via the mail, subsequent to October 1, 2001, to resubmit this data. Resubmissions should be made either via email to *Lisa.k.santana@customs.treas.gov* or via fax to (202) 927–1096. Similarly, those RLF participants who have not yet submitted such data are encouraged to make future submissions via email or fax to the above addresses. In the event submission via email or fax is not possible, mail submissions should be made to the Remote Location Filing Team, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Room 5.2–B, Washington, D.C. 20229.

Dated: November 6, 2001

ELIZABETH G. DURANT,
Acting Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, November 16, 2001 (66 FR 57774)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, November 14, 2001.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

DOUGLAS M. BROWNING,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF DECORATIVE STEEL CONTAINERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the tariff classification of decorative steel containers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of decorative steel containers and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before December 28, 2001.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 927–2391.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of steel containers. Although in this notice Customs is specifically referring to one ruling, NY F86857, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY F86857, dated May 26, 2000, set forth as "Attachment A" to this document, Customs found that one style of decorative steel container was classified in subheading 7323.99.90, HTSUS, as table, kitchen or other household articles, not coated or plated with precious metal. However, Customs ruled that another style of decorative steel container was classified in subheading 9405.50.40, HTSUS, as non-electrical lamps and light fittings, other. The importer claims that both of the decorative steel containers should be classified in subheading 8306.29.00, HTSUS, as statuettes and other ornaments, and parts thereof, other. Customs has reviewed the matter and determined that the correct classification of all of the decorative steel containers is in subheading 7323.99.90, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY F86857 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964477 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 8, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 26, 2000.

CLA-2-94:RR:NC:2:227 F86857
Category: Classification
Tariff No. 9405.50.4000 and 7323.99.9060

MR. RICK MOSLEY
KUEHNE & NAGEL, INC.
101 Wrangler Drive, Ste. 201
Coppell, TX 75019

Re: The tariff classification of metal candleholders and a metal household container from China.

DEAR MR. MOSLEY:

In your letter dated April 27, 2000, on behalf of Tuesday Morning Partners, Ltd., you requested a tariff classification ruling. Samples are being returned as requested.

The samples submitted consist of the following metal (other than brass) articles:

a) an open-worked non-three-dimensional Christmas tree-shaped metal candleholder, style number A1-6299, that measures approximately 11 inches in height by

5½ inches at its widest point and features a base measuring about 4½ inches in diameter. It also possesses a star-shaped figure attached to the top of the tree and a ring-shaped holder, situated a few inches above its base, that contains a glass receptacle (for a candle) measuring about 1¾ inches high with an open top diameter of 2¼ inches.

b) a set of four metal candlesticks (style number VV91170–9X1), with each measuring approximately 11 inches in height, that are connected by three open-worked oblong-shaped folding panels measuring 6 inches by 4 inches and possessing a Christmas tree motif. It is noted that the top of each candlestick features a concave-like holder with a spike at its midsection for securing a candle (not included).

c) an open-worked non-three-dimensional tree-shaped metal candleholder, style number 109292, that measures approximately 23 inches in height with an opened ring-shaped base diameter of 7¼ inches. There are two tiers of candleholders, emanating from the tree-like figure, that possess a total of eight concave-like holders with spikes at their midsection. Further, it has an opened star-shaped figure, affixed to the top of the tree, onto which is attached a concave-like holder with spike.

d) a cylindrical-shaped pillar candleholder of metal, style number VV911729Q (S110017), that measures approximately 3¼ inches in height with an open top diameter of 3-7/8 inches. It features an open-worked exterior depicting festive and seasonal-related motifs. It also possesses three small ball-shaped supports affixed to the bottom of the base.

e) a cylindrical-shaped household container of metal, style number VV911729XQ (M110053), that measures approximately 3¼ inches in height with an open top diameter of 6 inches. It features an open-worked exterior depicting a holly with berries motif. It also possesses three small ball-shaped supports affixed to the bottom of the base.

It is claimed that this merchandise should be properly classified as festive articles since they are designed and displayed as Christmas articles and sold as such during the Christmas season. However, since these items, excluding style number VV911729XQ (M110053), are primarily functional candleholders, they must depict recognized festive motifs in three-dimensional representations to be considered for classification as festive articles

The applicable subheading for the these metal candleholders, style numbers A1–6299, VV91170–9X1, 109292 and VV911729Q (S110017), will be 9405.50.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for other non-electrical lamps and lighting fittings, other. The duty rate will be 6 percent ad valorem

The applicable subheading for the metal household container, style number VV911729XQ (M110053), will be 7323.99.9060, HTS, which provides for other table, kitchenware or other household articles and parts thereof, of iron or steel * * * other, other. The rate of duty will be 3.4 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist George Kalkines at 212–637–7073.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964477 KBR
Category: Classification
Tariff No. 7323.99.90

RICK MOSLEY
KUEHNE & NAGEL, INC.
101 Wrangler Drive
Suite 201
Coppell, TX 75019

Re: Reconsideration of NY F86857; Decorative Steel Containers.

DEAR MR. MOSLEY:

This is in reference to your letter dated August 14, 2000, on behalf of Tuesday Morning Partners, Ltd., in which you requested reconsideration of New York Ruling Letter (NY) F86857, issued to you by the Customs National Commodity Specialist Division, on May 26, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of, among other items, certain decorative steel containers.

Facts:

In NY F86857 the subject articles were described as follows. The products involved are two styles of 'gold'-toned decorative steel containers. Style VV911729XQ (M110053) is 6 inches in diameter and 3 inches high. The side walls are cutouts of leaves and it has a wire mesh bottom with three ball-shaped legs attached to the bottom.

Style VV911729Q (S110017) is 4 inches in diameter and 3 ¼ inches high. The side walls are cutouts of trees, holly, reindeer and snowmen. It has a solid metal bottom with three ball-shaped legs attached to the bottom. You submitted for our examination, samples which match sample S110017 in design but are in medium and large sizes.

In NY F86857 it was determined that style M110053 was a household article of iron or steel, not coated or plated with precious metal, classifiable under subheading 7323.99.9060, HTSUS. Style S110017 was found to be a non-electrical lamp or lighting fitting classifiable under subheading 9405.50.4000, HTSUS. We have reviewed that ruling and determined that the classification of style S110017 in incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject decorative steel containers?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

7323	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel;
	Other:
7323.99	Other:
	Not coated or plated with precious metal:

7323.99.90	Other
8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base meal parts thereof:
	Statuettes and other ornaments, and parts thereof:
8306.29.00	Other
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.50	Non-electrical lamps and lighting fittings:
	Other:
9405.50.40	Other

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that in the absence of context to the contrary, a tariff classification controlled by use, other than actual use, is to be determined by the principal use in the United States at, or immediately prior to, the date of importation, of goods of the same class or kind of merchandise.

In *E.C. Lineiro v. United States*, 37 CCPA 10, CAD 411 (1949), the court states that "a designation by use may be established, although the word 'use' or 'used' does not appear in the language of the statute." As such, it is the use of the class or kind of merchandise to which the imported article belongs, which must be determined, not the "alleged" use of the instant merchandise.

The court in *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996 Ct. Intl. Trade) explained the application of these types of HTSUS provisions thus:

> When applying a "principal use" provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. *See supra* Additional U.S. Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g., the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); *see also Lenox Coll.[v. United States]*, 20 C.I.T., Slip Op. 96–30, at page 5.

In your submission dated August 14, 2000, you state that the decorative steel containers are intended to be used "as festive candleholders during the Christmas holiday season." You state that the articles are composed of lightweight, low cost metal of nominal value and small bulk. You also state that they possess no utilitarian value and are used only as festive holiday decorations "to contain or support other decorative articles or add to their decorative effect." This indicates that you believe the containers may be used to hold articles other than just candles. We agree. Although the articles are capable of use as candleholders, as a class or kind of merchandise, the containers may be used in the same manner as other household containers, such as bowls, platters or serving dishes. The form of these articles does not belong to the class or kind of goods that includes lamps and lighting fittings. Therefore, we find that they are not candleholders classifiable under subheading 9405.50.40, HTSUS.

You then argue that if the decorative steel containers are not classifiable as candleholders, they should be classified as statuettes and other ornaments under heading 8306, HTSUS. The EN for 83.06 states:

> This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, places of religious worship, gardens.
>
> It should be noted that the group does not include articles of more specific headings of the Nomenclature, even if those articles are suited by their nature or finish as ornaments.
>
> The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:
>
> * * * * * * *

(3) Table-bowls, vases, pots, jardinières (including those of cloisonné enamel).

The group also includes, in the circumstances explained below, certain goods of the two following categories even though they have a utility value:

(A) Household or domestic articles whether they are potentially covered by specific headings for such goods (i.e., headings 73.23, 74.18 and 76.16) or by the "other articles" headings (e.g., in the case of articles of nickel and tin in particular). These household or domestic articles are generally designed essentially to serve useful purposes, and any decoration is usually secondary so as not to impair the usefulness. If, therefore, such decorated articles serve a useful purpose no less efficiently than their plainer counterparts, they are classified as domestic goods rather than in this group. On the other hand, if the usefulness of the article is clearly subordinate to its ornamental or fancy character, it should be classified in this group, for example, trays so heavily embossed that their usefulness is virtually nullified; ornaments incorporating a purely incidental tray or container usable as a trinket dish or ash-tray; and miniatures having no genuine utility value (miniature kitchen utensils).

Examination of the samples indicates that they are inexpensively made. The side walls are crudely cut out and the designs are hard to distinguish. A user is not likely to use them alone as a decorative article without placing another decorative article in it. The decorations on the articles do not impair or nullify the articles' usefulness as a container. These containers may easily be used to serve breads, candies, or other items. Mere attractiveness and minor decorations do not convert a useful item into an ornamental article. The instant containers are not so decorated that their use would be less efficient than a plainer container. Further, we see no reason to distinguish one style from the other for classification purposes, as was done in NY F86857. Both styles (M110053 and S110017) are decorative steel containers whose usefulness is not subordinate to its ornamentation.

You cite HQ 955112 (February 14, 1994), where a silver-plated candelabra attached to a table bowl used to hold flowers as a table centerpiece was found to be classified under subheading 8306.21.00, HTSUS, which provides for statuettes and other ornaments and parts thereof, plated with precious metal. We do not find that case to be similar to the subject containers. In that case, the article was a combined article, both a candelabra and a bowl, having a much more decorative effect. The bowl seemed to have only one use, as a decorative flower holder. The ruling stated that the "article's usefulness is subordinate to its decorative effect". In the instant case, the containers have multiple uses. There is no candelabra attached to accentuate any decorativeness the container might have. Unlike the article described in HQ 955112, it is more useful than decorative. Therefore, we find that both styles of steel containers are classifiable under subheading 7323.99.90, HTSUS, as table, kitchen or other household articles, of iron or steel, not coated or plated with precious metal, other.

Holding:

In accordance with the above discussion, the decorative steel containers, Style VV911729XQ (M110053) and Style VV911729Q (S110017), are classified in subheading 7323.99.90, HTSUS, as table, kitchen or other household articles, of iron or steel, not coated or plated with precious metal, other.

NY F86857, dated May 26, 2000, is **modified** with respect to the decorative steel containers as set forth herein. The classification of the other articles is not affected by this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO COUNTRY OF ORIGIN OF CERTAIN GIRLS' KNITTED DRESSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the country of origin of certain girls' knitted dresses.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter and revoke any treatment previously accorded by Customs to substantially identical transactions, pertaining to the country of origin of certain girls' knitted dresses. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Shari Suzuki, Textile Branch, (202) 927–2339.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify New York Ruling Letter (NY) G82930,

dated November 8, 2000, which pertains to the country of origin of certain girls' knitted dresses. NY G82930 is set forth as "Attachment A" to this document.

Although in this notice Customs is specifically referring to one ruling, NY G82930, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced ruling (see above), should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY G82930 and any other ruling not specifically identified, to reflect the proper country of origin of the merchandise pursuant to the analysis set forth in Proposed HQ 964794 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 13, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 8, 2000.

Document No: CLA–2–RR:NC:TA:N3:358 G82930
Category: Classification
Tariff No: 6104.42.0020

MR. EDWARD HENG
GROUP LOGISTICS MANAGER
GHIM LI FASHION CO. PTE. LTD.
No. 7 Kampong Kaya Road
Singapore 438162

Re: Classification and country of origin determination for girls' knit cotton dresses; 19 CFR 102.21(c)(4).

DEAR MR. HENG:

This is in reply to your letter dated October 31, 2000, requesting a classification and country of origin determination for two girls' knit cotton dresses, which will be imported into the United States. The dresses do not have style numbers.

Facts:

Both dresses have sleeveless polo shirt type styling and lettuce hems. They are made from 1 by 1 rib knit cotton fabric. The garments have shirt collars and three button plackets which fasten right over left. One dress is made of yarn dyed fabric. The other dress is made of solid color fabric and has an embroidered flower near the placket. For purposes of this ruling, we assume the dresses will be sized for girls' 7 to 16.

You describe two possible manufacturing scenarios for the dresses. They are as follows:

First Production Plan

Country A

– pattern marking and making
– piece goods are cut into shaped components
– making up of collar
– making up of the front placket and joining it to the front panel
– joining the shoulder seams of the front and back panels
– attaching of the collar to the front and back panels using self fabric piping
– attaching of main and care labels

Country B

– making button holes for front placket and attaching buttons
– sewing of side seams of front and back panels
– sewing of sleeve using inner facing self fabric binding and topstitch
– hemming of bottom lettuce edge
– cutting threads
– final inspection
– packing

Second Production Plan

Country A

– pattern marking and making

Country B

– piece goods are cut into shaped components
– making up of collar
– making up of the front placket and joining it to the front panel
– joining the shoulder seams of the front and back panels
– attaching of the collar to the front and back panels using self fabric piping
– attaching of main and care labels

Country A

– making of button holes of front placket and attaching buttons
– sewing of side seams of front and back panels
– sewing of sleeve using inner facing self fabric binding and topstitch

– hemming of bottom lettuce edge
– cutting threads
– final inspection
– packing

Issue:

What are the classification and country of origin of the subject merchandise?

Classification:

The applicable subheading for the girls' knit cotton dresses will be 6104.42.0020, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, among other articles, women's or girls' dresses, skirts, divided skirts, trousers, knitted or crocheted, of cotton, dresses, of cotton, girls'. The rate of duty will be 11.8 percent ad valorem.

Girls' knit cotton dresses fall within textile category designation 336. The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

Country of Origin—Law and Analysis:

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act (codified at 19 U.S.C. 3592) provides new rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21, Customs Regulations, in the Federal Register, implementing Section 334 (60 FR 46188). Thus, effective July 1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states that "The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section:"

Paragraph (e) in pertinent part states that "The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section":

HTSUS Tariff shift and/or other requirements

If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6101 through 6117 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

Section 102.21(e) states that the country of origin for the dresses, is the country where the unassembled components are wholly assembled. Accordingly, as the dresses are not assembled in a single country, Section 102.21(c)(2) is inapplicable.

Section 102.21(c)(3) states that, "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section":

> (i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or
>
> (ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

As the subject merchandise is neither knit to shape, nor wholly assembled in a single country, Section 102.21(c)(3) is inapplicable.

Section 102.21(c)(4) states, "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred".

In this case, the assembly of the garment, under both proposed production plans, occurs in both countries A and B. It is the opinion of this office, that the assembly in country A, where, among other activities, the sewing of both sleeves to the main body and the sewing of the side seams to join the front and back panels occur, constitute the most important assembly processes. Accordingly, the country of origin of the girls' dresses is country A.

Holding:

The country of origin of the girls' dresses is country A. Based upon international textile trade agreements products of country A may be subject to quota and the requirement of a visa.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 177.9(b)(1). This section states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Bruce Kirschner at 212–637–7079.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 964794 SS
Category: Classification
Tariff No. 6104.42.0020

MR. EDWARD HENG
GROUP LOGISTICS MANAGER
GHIM LI FASHION CO. PTE. LTD.
No. 7 Kampong Kaya Road
Singapore 438162

Re: Modification of NY G82930; Classification and country of origin determination for two girls' knit cotton dresses; 19 CFR 102.21(c)(4).

DEAR MR. HENG:

On November 8, 2000, the New York Office of the Customs Service issued New York Ruling Letter (NY) G82930 to you regarding the classification and country of origin determination for two girls' knit cotton dresses. This letter is to inform you that upon review of NY G82930, it has been determined that the ruling should be modified to the extent that it addresses the country of origin determination. This ruling does not modify or revoke the

classification of the dresses. This letter sets forth the correct country of origin determination.

Facts:

The dresses were described in NY G82930 as follows:

> Both dresses have sleeveless polo shirt type styling and lettuce hems. They are made from 1 by 1 rib knit cotton fabric. The garments have shirt collars and three button plackets which fasten right over left. One dress is made of yarn dyed fabric. The other dress is made of solid color fabric and has an embroidered flower near the placket. For purposes of this ruling, we assume the dresses will be sized for girls' 7 to 16.

The dresses were properly classified under subheading 6104.42.0020, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, among other things, girls' knitted dresses of cotton.

Two possible manufacturing scenarios for the dresses were set forth as follows:

First Production Plan

Country A

- pattern marking and making
- piece goods are cut into component shapes
- making up of collar
- making up of the front placket and joining it to the front panel
- joining the shoulder seams of the front and back panels
- attaching the collar to the front and back panels using self fabric piping
- attaching main care labels

Country B

- making of button holes for front placket and attaching buttons
- sewing side seams of front and back panels
- sewing of sleeve using inner facing self fabric binding and topstitch (it is assumed that the operation refers to the seaming of the armhole openings since the dresses are described as "sleeveless")
- hemming of bottom lettuce edge
- cutting threads
- final inspection
- packing

Second Production Plan

Country A

- pattern marking and making

Country B

- piece goods are cut into component shapes
- making up of collar
- making up of the front placket and joining it to the front panel
- joining the shoulder seams of the front and back panels
- attaching the collar to the front and back panels using self fabric piping
- attaching main care labels

Country A

- making of button holes for front placket and attaching buttons
- sewing side seams of front and back panels
- sewing of sleeve using inner facing self fabric binding and topstitch (it is assumed that the operation refers to the seaming of the armhole openings since the dresses are described as "sleeveless")
- hemming of bottom lettuce edge
- cutting threads
- final inspection
- packing

Issue:

What is the country of origin of the subject merchandise?

Country of Origin—Law and Analysis:

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act (codified at 19 U.S.C. 3592) provides new rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21, Customs Regulations, in the Federal Register, implementing Section 334 (60 FR 46188). Thus, effective July 1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states that "[t]he country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that "[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section:"

Paragraph (e) in pertinent part states that "[t]he following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

* * * * * * *

HTSUS	Tariff shift and/or other requirements
6101–6117	(1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6101 through 6117 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession."

Section 102.21(e) states that the country of origin for the dresses, is the country where the unassembled components are wholly assembled. Since the dresses are not assembled in a single country, Section 102.21(c)(2) is inapplicable.

Section 102.21(c)(3) states that, "[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:

> (i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or
> (ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled."

As the subject merchandise is neither knit to shape, nor wholly assembled in a single country, Section 102.21(c)(3) is inapplicable.

Section 102.21(c)(4) states, "[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred."

In NY G82930, Customs stated that the sewing of both sleeves to the main body and sewing of the side seams to join the front and back panels constituted the most important assembly processes. However, since there are no sleeves to be sewn to the main body on a "sleeveless" dress, Customs decided to revisit the matter. Although no rulings on identical merchandise were identified, Customs finds that the sewing of side seams and attachment of sleeves do not generally constitute the most important assembly processes for a girls' knit polo-style shirt. See HQ 958930, dated May 28, 1996. In HQ 958930, the most important assembly operations consisted of attaching the front and back panels by sewing the shoulder seam, forming and attaching the placket to the front panel, forming and attaching the collar and attaching rib cuffs to the sleeves. Applying this rationale, it is Customs belief that the joining of the front and back panels by sewing the shoulder seams, forming and attaching the collar and forming and attaching the placket constitute the most important assembly process for the subject dresses. Accordingly, the country of origin under the first production plan is country A and the country of origin under the second production

plan is country B. This holding is also consistent with HQ 960059, dated February 24, 1997 and NY F84192, dated April 7, 2000.

Holding:

NY G82930 is hereby modified.

The country of origin of the girls' dresses in the first production plan is country A. The country of origin of the girls' dresses in the second production plan is country B.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 177.9(b)(1). This section states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

JOHN DURANT,
Director,
Commercial Rulings Division

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF PORTABLE PROPANE GAS CAMPING STOVE AND PROPANE HEATERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation and modification of ruling letters and revocation of treatment relating to tariff classification of a portable propane gas camping stove and propane heaters.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke one ruling letter and modify another pertaining to the tariff classification of merchandise under the Harmonized Tariff Schedule of the United States ("HTSUS"). One ruling letter pertains to the classification of a portable propane gas camping stove; the second ruling letter pertains to the classification of propane heaters. Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before December 28, 2001.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke one ruling letter and to modify another. The ruling to be revoked, DD 815332, pertains to the tariff classification of a portable propane gas camping stove. The ruling to be modified, NY 803374, pertains to the tariff classification of propane heaters. NY 803374 is being modified, rather than revoked, because the proposed change pertains to only one of the two items classified in that ruling. Although in this notice Customs is specifically referring to two rulings, DD 815332 and NY 803374, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation

of the Harmonized Tariff Schedule of the United States ("HTSUS"). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In DD 815332 dated November 1, 1995, set forth as Attachment A to this document, Customs classified a portable propane gas camping stove in subheading 7321.12.00, Harmonized Tariff Schedule of the United States ("HTSUS"), which covers: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: * * * For liquid fuel." It is now Customs position that the portable propane gas camping stove is classified in subheading 7321.11.10, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Portable."

In NY 803374 dated November 9, 1994, set forth as Attachment B to this document, Customs classified portable heaters in subheading 7321.82.10, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: * * * Other appliances: * * * For liquid fuel: Portable." It is now Customs position that the propane heaters are classified in subheading 7321.81.10, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: * * * Other appliances: For gas fuel or for both gas and other fuels: Portable."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke DD 815332 and to modify NY 803374, as well as any other ruling not specifically identified in order to reflect the proper classification of the portable propane gas camping stove and propane heaters pursuant to the analysis set forth in proposed HQ 964976 and HQ 965297, set forth as Attachments C and D, respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: November 13, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
San Diego, CA, November 1, 1995.
CLA–2–73:DAB:C:SD B12 815332
Category: Classification
Tarriff No. 7321.12.0000

MR. DOUGLAS SHEWRING
AMERICAN LEISURE PRODUCTS COMPANY
Post Office Box 53
Newport, RI 02840

Re: The tariff classification of a Portable Gas Camping Stove.

DEAR MR. SHEWRING:

In your correspondence dated September 17, 1995, you requested a tariff classification ruling for a portable gas camping stove, "Skottel Brani" (to be called "Caddychef" in the United States).

The stove is described as an enameled steel portable propane gas camping or cooking stove with a brass gas valve and stainless steel burner. Additionally, it has pouring lips and carry handles (on each side). It is packed in a nylon carrying bag, (stove folds away) with carry clasp and handles, and can be used in the mountains, in the garden, and on the beach. Lastly, the article utilizes an 11-pound disposable propane bottle (not included at time of importation).

Under the General Rules of Interpretation (1), the stove will be classified under subheading 7321.12.00 00, Harmonized Tariff Schedules of the United States (HTS), which provides for Stoves, and similar nonelectric domestic appliances of steel; Cooking appliances; for liquid fuel. The rate of duty will be 3.4 percent ad valorem.

Under General Rules of Interpretation (5)(a), containers specially shaped or fitted to contain a specific article or set of articles suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. Hence, since the carrying handles of the stove fit into the designed openings of the container, the carrying case will be classified with the stove.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 CFR 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs Officer handling the transaction.

JOYCE HENDERSON,
Port Director.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 9, 1994.
CLA–2–73:S:N:N3:113 803374 JTS
Category: Classification
Tariff No. 7321.81.1000 and 7321.82.1000

MS. STACI ROBINSON
LEP PROFIT INTERNATIONAL, INC.
16038 Vickery, Suite 2000
Houston, TX 77032

Re: The tariff classification of infrared heaters from the United Kingdom.

DEAR MS. ROBINSON:

In your letter dated October 13, 1994, on behalf of the Dearborn Company, Inc., you requested a tariff classification ruling.

The merchandise is the Dearborn Infrared Heater, model numbers DIR18N, DIR30N, DIR18LP, and DIR30LP. All models are vent-free, steel heaters that can be floor or wall mounted. The heater is available in two sizes, 18,000 Btu and 30,000 Btu. Models DIR18N and DIR30N are fueled by natural gas. Models DIR18LP and DIR30LP are fueled by liquid propane.

The applicable subheading for the natural gas heaters (model nos. DIR18N and DIR30N) will be 7321.81.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, of iron or steel, other appliances, for gas fuel or for both gas and other fuels, portable. The rate of duty will be 5.7 percent ad valorem.

The applicable subheading for the liquid propane heaters (model nos. DIR18LP and DIR30LP) will be 7321.82.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, of iron or steel, other appliances, for liquid fuel, portable. The rate of duty will be 5.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964976 GOB
Category: Classification
Tariff No. 7321.11.10

DOUGLAS SHEWRING
AMERICAN LEISURE PRODUCTS COMPANY
P.O. Box 53
Newport, RI 02840

Re: Revocation of DD 815332; Portable Propane Gas Camping Stove.

DEAR MR. SHEWRING:

This letter is with respect to DD 815332 issued to you November 1, 1995, by the Port Director of Customs, San Diego, with respect to the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a portable propane gas camping stove. We have reviewed the classification set forth in DD 815332 and have determined that it is incorrect. This ruling sets forth the correct classification.

Facts:

The article at issue was described in DD 815332 as follows:

> * * * an enameled steel portable propane gas camping or cooking stove with a brass gas valve and stainless steel burner. Additionally, it has pouring lips and carry handles (on each side). It is packed in a nylon carrying bag (stove folds away) with carry clasp and handles * * * the article utilizes an 11-pound disposable propane bottle (not included at time of importation).

In DD 815332, Customs classified the portable propane gas camping stove in subheading 7321.12.00, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: * * * For liquid fuel."

Issue:

What is the classification under the HTSUS of the portable propane gas camping stove?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. GRI 6 provides in pertinent part: "For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at any level are comparable."

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

7321		Stoves, ranges, grates, cookers, (including those with subsidiary boilers for central heating), barbeques, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel:
		Cooking appliances and plate warmers:
7321.11		For gas fuel or for both gas and other fuels:
7321.11.10		Portable
*	*	* * * * * * *
7321.12.00		For liquid fuel.

EN 73.21 provides that that heading includes camping stoves.

The crucial issue in this classification matter is whether the subject article is a cooking appliance "for gas fuel or for both gas and other fuels" (subheading 7321.11.10, HTSUS) or "for liquid fuel" (subheading 7321.12.00, HTSUS). The article is described as a portable propane gas camping stove. That description would seem to indicate that the article is a cooking appliance for gas fuel. We have examined the definitions of "propane" in various resources.

The *Van Nostrand Reinhold Encyclopedia of Chemistry* (4th ed., 1984) defines "propane" in pertinent part as follows: "* * * colorless gas [technical specifications omitted] * * * The content of propane in natural gas varies with the source of the natural gas, but on average is about 6%. Propane is also obtainable from petroleum sources. Liquefied propane is marketed as a fuel for outlying areas where other fuels may not be readily available and for portable cook stoves * * * Propane and other liquefied gases are clean and appropriate for most heating purposes * * *"

Hawley's Condensed Chemical Dictionary (12th ed., 1993) defines "propane" in pertinent part as follows: "* * * Properties: Colorless gas, natural-gas odor * * * an asphyxiant gas * * * Derivation: From petroleum and natural gas."

The Random House Dictionary of the English Language (unabridged ed., 1973) defines propane as follows: "a colorless, flammable gas [symbol omitted] of the alkane series, occurring in petroleum and natural gas: used chiefly as a fuel and in organic synthesis. Also called dimethylmethane."

We conclude from these authorities that propane is a gas, and not a liquid.

The HTSUS classifies propane in subheading 2711.12.00, HTSUS, as: "Petroleum gases and other gaseous hydrocarbons: Liquefied: * * * Propane." We interpret that classification to the effect that propane is a liquefied *gas*. EN 27.11 provides in pertinent part: "This heading covers **crude** gaseous hydrocarbons obtained as natural gases or from petroleum, or produced chemically. **Methane** and **propane** are, however, included even when pure. These hydrocarbons are gaseous at a temperature of 15 degrees C and under a pressure of 1,013 millibars (101.3 kPa). They may be presented under pressure as liquids in metal containers and are often treated, as a safety measure, by the addition of small quantities of highly odiferous substances to indicate leaks. They include, in particular, the following gases, whether or not liquefied: (1) Methane and propane, whether or not pure

* * *" [Emphasis in original.] We interpret that language of the EN to the effect that propane is a gas.

Accordingly, we find that the article at issue, described as a portable propane gas camping stove, is a cooking appliance for gas fuel. Therefore, it is classified in subheading 7321.11.10, HTSUS.

This determination is consistent with the following rulings: HQ 950297 dated December 31, 1991, where Customs classified a catalytic safety heater which uses liquid propane gas in subheading 7321.81.50, HTSUS; and NY 838467 dated March 28, 1989, where Customs classified a table top gas grill fueled by low pressure liquefied petroleum gas in subheading 7321.11.10, HTSUS.

Holding:

The portable propane gas camping stove is classified in subheading 7321.11.10, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Portable."

Effect on Other Rulings:

DD 815332 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965297 GOB
Category: Classification
Tariff No. 7321.81.10

STACI ROBINSON
LEP PROFIT INTERNATIONAL, INC.
16038 Vickery
Suite 2000
Houston, TX 77032

Re: Modification of NY 803374; Propane Heaters.

DEAR MS. ROBINSON:

This letter is with respect to NY 803374 issued to you on November 9, 1994, on behalf of the Dearborn Company, Inc., by the Customs Area Director, New York Seaport, with respect to the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of propane heaters (model nos. DIR18LP and DIR30LP). We have reviewed the classification of the propane heaters set forth in NY 803374 and have determined that it is incorrect. This ruling sets forth the correct classification. Please note that this ruling has no effect on the second article classified in NY 803374, natural gas heaters.

Facts:

The articles at issue were described in NY 803374 as liquid propane heaters (model nos. DIR18LP and DIR30LP).

In NY 803374, Customs classified the propane heaters in subheading 7321.82.10, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: * * * Other appliances: * * * For liquid fuel: Portable."

Issue:

What is the classification under the HTSUS of the propane heaters?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. GRI 6 provides in pertinent part: "For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at any level are comparable."

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

7321	Stoves, ranges, grates, cookers, (including those with subsidiary boilers for central heating), barbeques, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel:
	Other appliances:
7321.81	For gas fuel or for both gas and other fuels:
7321.81.10	Portable
* * * * * * *	
7321.82	For liquid fuel:
7321.82.10	Portable.

The crucial issue in this classification matter is whether the subject articles are appliances "for gas fuel or for both gas and other fuels" (subheading 7321.81.10, HTSUS) or "for liquid fuel" (subheading 7321.82.10, HTSUS). (There has been no dispute of the determination in NY 803374 that the propane heaters are portable.) We have examined the definitions of "propane" in various resources.

The *Van Nostrand Reinhold Encyclopedia of Chemistry* (4th ed., 1984) defines "propane" in pertinent part as follows: "* * * colorless gas [technical specifications omitted] * * * The content of propane in natural gas varies with the source of the natural gas, but on average is about 6%. Propane is also obtainable from petroleum sources. Liquefied propane is marketed as a fuel for outlying areas where other fuels may not be readily available and for portable cook stoves * * * Propane and other liquefied gases are clean and appropriate for most heating purposes * * *"

Hawley's Condensed Chemical Dictionary (12th ed., 1993) defines "propane" in pertinent part as follows: "* * * Properties: Colorless gas, natural-gas odor * * * an asphyxiant gas * * * Derivation: From petroleum and natural gas."

The Random House Dictionary of the English Language (unabridged ed., 1973) defines propane as follows: "a colorless, flammable gas [symbol omitted] of the alkane series, occurring in petroleum and natural gas: used chiefly as a fuel and in organic synthesis. Also called dimethylmethane."

We conclude from these authorities that propane is a gas, and not a liquid.

The HTSUS classifies propane in subheading 2711.12.00, HTSUS, as: "Petroleum gases and other gaseous hydrocarbons: Liquefied: * * * Propane." We interpret that classification to the effect that propane is a liquefied *gas*.

EN 27.11 provides in pertinent part: "This heading covers **crude** gaseous hydrocarbons obtained as natural gases or from petroleum, or produced chemically. **Methane** and **propane** are, however, included even when pure. These hydrocarbons are gaseous at a temperature of 15 degrees C and under a pressure of 1,013 millibars (101.3 kPa). They may be presented under pressure as liquids in metal containers and are often treated, as a safety measure, by the addition of small quantities of highly odiferous substances to indicate leaks. They include, in particular, the following gases, whether or not liquefied: (1) Methane and propane, whether or not pure * * *" [Emphasis in original.] We interpret this language of the EN to the effect that propane is a gas.

Accordingly, we find that the articles at issue, propane heaters, are appliances for gas fuel. Therefore, they are classified in subheading 7321.81.10, HTSUS.

This determination is consistent with the following rulings: HQ 950297 dated December 31, 1991, where Customs classified a catalytic safety heater which uses liquid propane gas in subheading 7321.81.50, HTSUS; and NY 838467 dated March 28, 1989, where Customs classified a table top gas grill fueled by low pressure liquefied petroleum gas in subheading 7321.11.10, HTSUS.

Holding:

The propane heaters are classified in subheading 7321.81.10, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: * * * Other appliances: For gas fuel or for both gas and other fuels: Portable."

Effect on Other Rulings:

NY 803374 is modified with respect to the classification of the propane heaters.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF MECHANICAL TRANSFER PRESS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of mechanical transfer press.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the tariff classification of a mechanical transfer press, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on October 3, 2001, in the Customs Bulletin.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 28, 2002.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sec-

tions of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility.** These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on October 3, 2001, in the Customs Bulletin, Volume 35, Number 40, proposing to revoke *NY* 857696, dated November 8, 1990, which classified a mechanical transfer press as other machine tools (including presses) for working metal, in subheading 8462.99.80, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking *NY* 857696 to reflect the proper classification of mechanical transfer presses in subheading 8462.10.00, HTSUS, as machine tools for working metal by diestamping, pursuant to the analysis in *HQ* 965247, which is set forth as

the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Dated: November 13, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 13, 2001.

CLA-2 RR:CR:GC 965247 JAS
Category: Classification
Tariff No. 8462.10.00

KRISTINE M. NELSON
HARPER, ROBINSON & CO.,
411 E. Irving Park Road
Bensenville, IL 60106

Re: *NY* 857696 Revoked; Mechanical Transfer Press.

DEAR MS. NELSON:

In *NY* 857696, which the then—Area Director of Customs, now the Director of Customs National Commodity Specialist Division, New York, issued to you on November 8, 1990, on behalf of IHI, Inc., a mechanical transfer press was found to be classifiable in a provision for other machine tools (including presses) for working metal, in subheading 8462.99.00 (now 80), Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this classification and now believe that it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* 857696 was published on October 3, 2001, in the Customs Bulletin, Volume 35, Number 40. No comments were received in response to that notice.

Facts:

Mechanical transfer presses are machine tools which utilize tools called dies to produce stamped parts for a variety of automotive and industrial applications. In operation, sheet metal stock is moved by a transfer mechanism from station to station within the press where, by force or pressure, the dies perform combinations of cutting, forming, trimming and sizing operations as the part gradually takes shape.

The HTSUS provisions under consideration are as follows:

8462		Machine tools (including presses) for working metal by * * * die-stamping: * * *:
8462.10.00		Forging or die-stamping machines (including presses) and hammers
*	*	* * * * * *
		Other:

8462.99	Other
8462.99.80	Other

Issue:

Whether mechanical transfer presses are die-stamping machines for tariff purposes.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Where not defined in the legal text of the HTSUS, either in a section or chapter note, or clearly described in the ENs, a tariff term is construed in accordance with its common and commercial meanings, which are presumed to be the same. In technical areas, Customs places great emphasis on industry-specific lexicons in determining the common meaning of a term. These lexicons tend to define terms with greater specificity than do general purpose dictionaries. *See Brown-Boveri Corp. v. United States*, 55 CCPA 19, 23, C.A.D. 870 (1966), and cases cited. The Glossary of Mechanical Press Terms, published by the American Society of Mechanical Engineers (ASME) as American National Standard B5.49M (1984), defines *stamping* as:

> The end product of a press operation, or a series of operations, wherein a piece part is generated by processing flat (or perforated) strip or sheet stock between the opposing members of a die. During the operation(s), the material is subjected to pressure sufficient to cut the part, or form the part, or both, into the required configuration. A general term used to describe the process, or the press operations, or both.

The ENs to heading 8462, on pp.1383 and 1384, indicate that stamping (or cutting out) is a process for forcing metal, by impact or pressure, to fill the hollows of metal moulds called dies. Generally, a press is used. Stamping machines can utilize special cutting dies to eliminate the flash produced during stamping or cutting out. The finishing operation carried out by a precision die-stamper is described as sizing, and produces the parts' necessary precise dimensions. It is apparent that die-stamping presses are capable of numerous machining operations that produce finished parts. Transfer dies consist of a series of stamping dies that progressively form the part, usually starting with a drawing or forming operation, then trimming, piercing, flanging, etc. Multiple dies/stations are typically required to complete the stamping operations on a part, and they are usually contained in a single press. From the available information, we are led to conclude that multiple transfer presses are a type of die stamping machine and should be so classified.

Holding:

Under the authority of GRI 1, the mechanical transfer press the subject of *NY* 857696 is provided for in heading 8462. It is classifiable in subheading 8462.10.00, HTSUS, a provision for die-stamping machines (including presses).

Effect on Other Rulings:

NY 857696, dated November 8, 1990, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 141 and 142

RIN 1515–AC91

SINGLE ENTRY FOR SPLIT SHIPMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single shipment which was split by the carrier, and arrives in the United States separately. The proposed amendments would implement statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

DATE: Comments must be received on or before January 15, 2002.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

For operational or policy matters: Keith Fleming, Office of Field Operations, (202) 927–1049.

For legal matters: Larry L. Burton, Office of Regulations and Rulings, (202) 927–1287.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 1460 of Public Law 106–476, popularly known as the Tariff Suspension and Trade Act of 2000, amended section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) by adding a new paragraph (j) in order to provide for the treatment of certain multiple shipments of merchandise as a single entry.

In this latter respect, 19 U.S.C. 1484(j) is concerned with two issues. First, section 1484(j)(1) addresses a problem long encountered by the importing community in entering merchandise whose size or nature ne-

cessitates shipment in an unassembled or disassembled condition on more than one conveyance. Second, section 1484(j)(2) offers relief to importers whose shipments which they intended to be carried on a single conveyance are divided at the initiative of the carrier. As to both these matters, the legislation is silent as to the affected modes of transportation, thus indicating that the new law is to apply to merchandise shipped by air, land or sea.

The regulations proposed today relate only to shipments which are divided by carriers; these will be referred to as "split shipments". Customs had already begun a project to amend the regulations to provide for one entry for such split shipments prior to the present statutory amendments, and it has since been determined that this effort should be completed. By a separate document that will be published in the Federal Register, Customs will propose regulations concerning the entry of shipments of unassembled or disassembled merchandise that arrive on more than one conveyance. Customs is working on that proposal, which will be published in the coming days.

It is noted that section 1484(j) includes a requirement that an importer make application in advance to obtain the single entry option. It is proposed that the importer provide written notice of the intent to file a single entry for all portions upon learning of the split shipment, but before the filing of summary.

SPLIT SHIPMENT DEFINED

Generally speaking, a split shipment consists of merchandise that is capable of being transported on a single conveyance, and that is delivered to and accepted by a carrier in the exporting country as one shipment under one bill of lading or waybill, and is thus intended by the importer to arrive as a single shipment. However, the shipment is thereafter divided by the carrier into different parts which arrive in the United States at different times, often days apart.

In practice, shipments often become split after being delivered intact to a carrier. The movement of cargo as a split shipment on multiple conveyances appears to be a regular and routine industry practice, particularly in the air environment. There are various reasons for a shipment to be split by a carrier, such as limited space, the need to balance weight distribution on a conveyance, and offloading for safety concerns. Occasionally a shipment may leave the exporting country as one shipment, but be offloaded in a second country, and then be reladen onto more than one conveyance for transport to the United States.

The Customs Regulations ordinarily require, with certain exceptions not here relevant, that all merchandise arriving on one conveyance and consigned to one consignee be included on one entry (see § 141.51, Customs Regulations (19 CFR 141.51)). There is no provision currently in the Customs Regulations authorizing the filing of a single entry to cover multiple portions of a shipment split by a carrier which then arrives in the United States at different times. While this proposed rule document would establish procedures to permit the acceptance of a single entry in

the case of such a split shipment, importers may, of course, continue to file a separate entry for each portion of a split shipment as it arrives, if they so choose.

Specifically, the proposed regulations would permit the filing of a single entry to cover a split shipment provided that: (1) the subject shipment was capable of being transported on a single conveyance, and was delivered to and accepted by a carrier in the exporting country under one bill of lading or waybill and was thus intended by the importer to be a single shipment; (2) the shipment was thereafter split or deconsolidated by the carrier, acting on its own; (3) the split-portions of the shipment remain consigned to the same party in the United States to whom they were destined in the original bill of lading or waybill; and (4) those portions of the split shipment that could be covered under the entry arrived directly from abroad at the same port of importation in the United States within 10 calendar days of the date of the portion that arrived first.

Entry or Release of Merchandise

Where a single entry is accepted for multiple portions of a split shipment that arrives at different times, the legislation leaves open the question of whether the various portions of the shipment may be released as they arrive, or whether their release must be delayed until the entire shipment is reunited. Customs has determined to provide either option to importers of certain shipments which have been split by carriers. Under either option, the proposed regulations require the importer to file Customs Form (CF) 3461 or CF 3461 alternate (CF 3461 ALT), or electronic equivalent, which will cover all of the merchandise enumerated on the invoice, as necessary to secure its release. In particular, this data must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice.

In the event that each portion of a split shipment is to be released upon its arrival, and prior to the arrival of the entire shipment, the procedure for releasing merchandise under a special permit for immediate delivery will be used for this purpose, as more fully outlined below. As each portion arrives, the importer must submit a copy of the CF 3461/CF 3461 ALT, adjusted to reflect the quantity of that particular portion.

Special Permit for Immediate Delivery

Customs law typically contemplates that merchandise will be imported before it is entered. This presents no problem for importers who elect to delay entry until all of the various portions of a split shipment have arrived and have been reunited within the specified time frame. However, it does raise an obstacle to allowing an entry covering an entire shipment to be filed and accepted when only a portion of the merchandise has thus far arrived. It also presents the difficult question of whether a rate of duty, set at the time of the release of the first portion, may apply to goods still outside, and not yet imported into, the United States. The proposed resolution of these latter two issues lies in requir-

ing such shipments to be released under a special permit for immediate delivery. Section 142.21(a)–(g), Customs Regulations (19 CFR 142.21(a)–(g)), describes the circumstances and lists the types of merchandise that are currently eligible to be released under a special permit for immediate delivery.

Due to the fact that merchandise released under the special permit procedures set forth in § 142.21 is not considered to be entered until the entry/entry summary is filed, all of the merchandise contained in the split shipment will be imported by the time the entry/entry summary is filed. The rate of duty applied to the merchandise will be the rate in effect for all goods released under the immediate delivery procedures; that is, the rate in effect when the entry/entry summary is filed. An importer who objects to having the duty rate tied to the date the entry/entry summary is filed may always file a separate entry for each portion of the split shipment as it arrives. In that case, the rate of duty will generally be the duty rate in effect at the time of release, unless the importer elects otherwise (see § 141.68(a), Customs Regulations (19 CFR 141.68(a))).

Incremental Release of Split Shipment under Immediate Delivery Procedure

It is proposed to create another category of immediate delivery releases, to be referred to as incremental release, by amending § 142.21 to add a new paragraph (g) that would allow the filing of a special permit for immediate delivery where the shipment is split by the carrier and the importer elects to have each portion of the shipment separately released as it arrives. Current paragraph (g) of § 142.21 would be redesignated as paragraph (h) and be revised consistent with proposed paragraph (g). If an entry had already been pre-filed with Customs, as allowable under § 142.2(b), Customs Regulations (19 CFR 142.2(b)), the notification to Customs by the importer of record that a single entry will be filed for shipments to be released incrementally would serve as a request that the pre-filed entry be converted to an application for a special permit for immediate delivery.

In order to secure the separate release of each split portion of a shipment following its arrival, manifest information relating to the special permit which reflects exact information for each portion of the shipment must be presented to Customs. The carrier that split or deconsolidated the shipment must present this manifest information to Customs; this may be done either electronically or on a paper manifest. The carrier must identify successive portions of the split shipment as they arrive. Customs may, however, examine any or all parts of the split shipment and would reserve the right to deny incremental release should such an examination of the merchandise be necessary.

As successive portions of the shipment arrive, these portions will be decremented against the manifested quantity, as reflected on the CF 3461/CF 3461 ALT, or electronic equivalent. This will continue for up to 10 calendar days until the total manifested quantity has arrived. Each

portion of a split shipment which does not arrive within 10 calendar days of the first portion must be entered separately.

FILING OF ENTRY SUMMARY

Where the shipment is entered after all portions of the shipment have arrived, the entry summary must be filed within 10 working days of the time of entry. In the alternative, where the shipment is instead initially released under a special permit for immediate delivery after all portions of the shipment have arrived, the entry summary, which would serve as both the entry and the entry summary, must be filed within 10 working days after the merchandise or any part of the merchandise has been authorized for release under the special permit, or, in the case of quota class merchandise, within the quota period, whichever expires first (see §§ 142.21(e) and 142.23, Customs Regulations (19 CFR 142.21(e), 142.23)).

Under proposed § 142.21(g), in the case of a split shipment which is released incrementally under the immediate delivery procedures, the entry summary, which would serve as both the entry and the entry summary, must be filed within 10 working days from the date of the first release of a portion of the split shipment. However, under no circumstances may the entry/entry summary be filed before the last portion of the split shipment which is to be included on the entry has arrived.

At the time of filing the entry summary, estimated duties, taxes and fees would need to be attached. If the entry summary is filed electronically, the estimated duties, taxes and fees would need to be scheduled at such time for payment pursuant to the Automated Clearinghouse (see § 24.25 of this chapter).

While 19 U.S.C. 1484(j) addresses the entry of merchandise, this legislation is silent as to classification principles. It is therefore proposed that for Customs classification purposes, the separate portions of a split shipment placed on one entry be classified as if they had been imported together.

REVIEW OF ENTRY DATA; EVIDENCE FOR SPLITTING OF SHIPMENT

The importer of record would be responsible for reviewing the total manifested quantity shown on the CF 3461/CF 3461 ALT, or electronic equivalent, in relation to all portions of the split shipment that arrived within the specified 10 calendar day period. At the conclusion of the specified 10 calendar day period, the importer of record would have to make any adjustments necessary to reflect the actual amount, value, correct classification and rate of duty of the merchandise that was properly included on the CF 3461/CF 3461 ALT or electronic equivalent. As discussed above, if all portions of the split shipment did not arrive within the required 10 calendar day period, an additional entry or entries as appropriate would have to be filed to cover any remaining portions of the split shipment that subsequently arrived.

Additionally, the importer of record must maintain sufficient documentary evidence to substantiate that the splitting of the shipment was

done by the carrier acting on its own, and not at the request of the foreign shipper and/or the importer of record. This documentation should include a copy of the originating bill of lading or waybill under which the shipment was delivered to the carrier in the country of exportation.

EXCLUSIONS FROM SPLIT-ENTRY PROCEDURE UNDER PROPOSED § 142.21(g)

Section 142.21(e) would be revised to make clear that the immediate delivery procedure under proposed § 142.21(g) that would authorize the release of each portion of a split shipment upon its arrival would not be available for merchandise that is subject to quota and/or visa requirements.

Customs also proposes to reserve the right for the port director to deny use of the incremental release procedure as circumstances warrant.

Nevertheless, in the case of quota class merchandise and other classes of merchandise excluded by Customs from incremental release as circumstances warrant, or where incremental release is denied due to Customs need to examine the merchandise, the importer may still file a single entry or special permit for immediate delivery covering the entire split shipment of the merchandise following, and to the extent of, its arrival within the required 10 calendar day period.

Accordingly, to implement 19 U.S.C. 1484(j) insofar as it enables Customs to accept a single entry for split shipments, as described, it is proposed to add a new § 141.57 to the Customs Regulations (19 CFR 141.57). Also, in addition to the proposed amendments to § 142.21, as noted, a minor conforming change would be made as well to § 141.51 of the Customs Regulations (19 CFR 141.51).

COMMENTS

Before adopting the proposed amendments, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12886

The proposed rule is intended to implement the statutory law and to engender cost savings by reducing paperwork for importers, and by reducing the number of entries required for split shipments. Hence, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other require-

ments of 5 U.S.C. 603 and 604. Nor does the proposed rule result in a "significant regulatory action" under E.O. 12866.

PAPERWORK REDUCTION ACT

The collections of information encompassed within this proposed rule have already been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0065 (Requirement to make entry unless specifically exempt; Requirement to file entry summary form); 1515–0167 (Statement processing and Automated Clearinghouse); 1515–0214 (General recordkeeping and record production requirements); and 1515–0001 (Transportation manifest; cargo declaration). This rule does not propose any substantive changes to the existing approved information collections. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

LIST OF SUBJECTS

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Computer technology, Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend parts 141 and 142, Customs Regulations (19 CFR parts 141 and 142), as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * * * *

2. It is proposed to revise § 141.51 to read as follows:

§ 141.51 Quantity usually required to be in one entry.

All merchandise arriving on one conveyance and consigned to one consignee must be included on one entry, except as provided in § 141.52. In addition, a shipment of merchandise that arrives by separate conveyances at the same port of arrival in multiple portions, as a split shipment, may be processed under a single entry, as prescribed in § 141.57.

3. It is proposed to amend subpart D of part 141 by adding a new § 141.57 to read as follows:

§ 141.57 Single entry for split shipments.

(a) *At election of importer of record.* At the election of the importer of record, a split shipment, pursuant to section 484(j)(2), Tariff Act of 1930

(19 U.S.C. 1484(j)(2)), may be processed under a single entry, as prescribed under the procedures set forth in this section.

(b) *Split shipment defined.* A "split shipment", for purposes of this section, means a shipment:

(1) Which may be accommodated on a single conveyance, and which is delivered to and accepted by a carrier in the exporting country under one bill of lading or waybill, and is thus intended by the importer to arrive in the United States as a single shipment;

(2) Which is thereafter divided by the carrier, acting on its own, into different portions which are transported and consigned to the same party in the United States; and

(3) Of which the first portion and all succeeding portions arrive directly from foreign at the same port of importation in the United States, and all the succeeding portions arrive within 10 calendar days of the date of the first portion.

(c) *Notification by importer.* The importer must notify Customs, in writing, that the shipment has been split at the carrier's initiative, that the remainder of the shipment will arrive by subsequent conveyance(s), and that an election is being made to file a single entry for all portions. The required notification must be given as soon as the importer becomes aware that the shipment has been split, but in all cases notification must be made before the entry summary is filed.

(d) *Entry or special permit for immediate delivery.* In order to make a single entry for a split shipment or obtain a special permit for the release of a split shipment under immediate delivery, an importer of record may follow the procedure prescribed in paragraph (d)(1) or (d)(2) of this section, as applicable.

(1) *Entry or special permit after arrival of entire shipment.* An importer may file an entry at such time as all portions of the split shipment have arrived. In the alternative, again after the arrival of all portions of a split shipment, the importer may instead file a special permit for immediate delivery provided that the merchandise is eligible for such a permit under § 142.21(a)–(f) and (h) of this chapter. In either case, Customs Form (CF) 3461 or CF 3461 alternate (CF 3461 ALT) as appropriate, or electronic equivalent, must be filed with Customs. The entry or special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice.

(2) *Special permit prior to arrival of entire shipment.* As provided in § 142.21(g) of this chapter, an importer of record may also file a special permit for immediate delivery after the arrival of the first portion of a split shipment, but before the arrival of the entire shipment, thus qualifying the split shipment for incremental release, under paragraph (e) of this section, as each portion of the shipment arrives (see paragraph (g)(2)(ii) of this section). In such case, a CF 3461 or CF 3461 ALT as appropriate, or electronic equivalent, must be filed with Customs. As each portion arrives, the importer must submit a copy of the CF 3461/CF 3461 ALT, adjusted to reflect the quantity of that particular portion. In

the event that an entry has been pre-filed with Customs (see § 142.2(b) of this chapter), notification to Customs by the importer of record that a single entry will be filed for shipments released incrementally will serve as a request that the pre-filed entry be converted to an application for a special permit for immediate delivery (see § 142.21(g) of this chapter). The special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice. The release of each portion of the split shipment upon arrival, as permitted under this paragraph, may be limited due to Customs need to examine the merchandise in accordance with paragraph (f) of this section.

(e) *Release.* To secure the separate release upon arrival of each portion of a split shipment under paragraph (d)(2) of this section, the carrier responsible for initially splitting the shipment must present to Customs either on a paper manifest or through an authorized electronic data interchange system manifest information relating to the shipment that reflects exact information for each portion of the split shipment.

(f) *Examination.* Customs examination of any or all parts of the split shipment may be required. For split shipments subject to the immediate delivery procedure of paragraph (d)(2) of this section, Customs reserves the right to deny incremental release should such an examination of the merchandise be necessary. The denial of incremental release does not preclude the use of the procedures specified in paragraph (d)(1) of this section.

(g) *Entry summary.* (1) *Entry.* For merchandise entered under paragraph (d)(1) of this section, an entry summary must be filed within 10 working days from the time of entry.

(2) *Release for immediate delivery.* (i) *Release under paragraph (d)(1) of this section.* For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(1) of this section, the entry summary, which serves as both the entry and the entry summary, must be filed within 10 working days after the merchandise or any part of the merchandise is authorized for release under the special permit or, for quota class merchandise, within the quota period, whichever expires first (see § 142.23 of this chapter).

(ii) *Release under paragraph (d)(2) of this section.* For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(2) of this section, the entry summary, which serves as both the entry and the entry summary, must be filed within 10 working days from the date of the first release of a portion of the split shipment. When the entry summary is filed, it must reflect all portions of the split shipment which have been released, to include quantity, value, correct classification and rate of duty. The entry summary cannot include any portions of the split shipment which have not been released.

(3) *Duty payment.* At the time the entry summary is filed under paragraphs (g)(1) and (g)(2)(i) and (ii) of this section, estimated duties, taxes and fees applicable to the released merchandise must be attached. If the entry summary is filed electronically, the estimated duties, taxes and

fees must be scheduled for payment at such time pursuant to the Automated Clearinghouse (see § 24.25 of this chapter).

(h) *Classification.* For purposes of section 484(j)(2), Tariff Act of 1930 (19 U.S.C. 1484(j)(2)), the merchandise comprising the separate portions of a split shipment included on one entry will be classified as though imported together.

(i) *Separate entry required.* All those portions of a split shipment that do not arrive within 10 calendar days of the portion that arrived first must be entered separately.

(j) *Requirement of importer to review entry and maintain evidence substantiating splitting of shipment.* (1) *Review of entry.* The importer of record will be responsible for reviewing the total manifested quantity shown on the CF 3461/CF 3461 ALT, or electronic equivalent, in relation to all portions of the split shipment that arrived within the specified 10 calendar day period. At the conclusion of the specified 10 calendar day period, the importer of record must make any adjustments necessary to reflect the actual amount, value, correct classification and rate of duty of the merchandise that was released incrementally under the split shipment procedures. If all portions of the split shipment do not arrive within the required 10 calendar day period, an additional entry or entries as appropriate must be filed to cover any remaining portions of the split shipment that subsequently arrive (see paragraph (i) of this section).

(2) *Evidence for splitting of shipment; recordkeeping.* The importer of record must maintain sufficient documentary evidence to substantiate that the splitting of the shipment was done by the carrier acting on its own, and not at the request of the foreign shipper and/or the importer of record. This documentation should include a copy of the originating bill of lading or waybill under which the shipment was delivered to the carrier in the country of exportation. This documentary evidence as well as all other necessary records received or generated by or on behalf of the importer of record under this section must be maintained and produced, if requested, in accordance with part 163 of this chapter.

(k) *Single entry limited; exclusions from single entry under incremental release procedure.*

(1) *Quota/visa merchandise.* Merchandise subject to quota and/or visa requirements is excluded from incremental release under the immediate delivery procedure set forth in paragraph (d)(2) of this section and § 142.21(g) of this chapter. Additionally, if by splitting a shipment any portion of it is subject to quota, no portion of the split shipment may be released incrementally.

(2) *Other merchandise.* In addition, the port director may deny the use of the incremental release procedure set forth in paragraph (d)(2) of this section and § 142.21(g) of this chapter, as circumstances warrant.

(3) *Limited single entry available.* For merchandise described in paragraphs (k)(1) and (k)(2) of this section, that is excluded from the immediate delivery procedure of paragraph (d)(2) of this section and § 142.21(g) of this chapter, the importer may still file a single entry or

special permit for immediate delivery under paragraph (d)(1) of this section covering the entire split shipment of such merchandise following, and to the extent of, its arrival within the required 10 calendar day period.

PART 142—ENTRY PROCESS

1. The general authority for part 142 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to amend § 142.21 as follows:

a. by removing the second sentence in paragraph (e)(1) and adding in its place two new sentences;

b. by removing the second sentence in paragraph (e)(2) and adding in its place two new sentences;

c. by redesignating paragraph (g) as paragraph (h) and adding a new paragraph (g); and

d. by revising newly redesignated paragraph (h).

The additions and revision read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * * * *

(e) *Quota-class merchandise.* (1) *Tariff rate.* * * * However, merchandise subject to a tariff-rate quota may not be incrementally released under a special permit for immediate delivery as provided in paragraph (g) of this section. Where a special permit is authorized, an entry summary will be properly presented pursuant to § 132.1 of this chapter within the time specified in § 142.23, or within the quota period, whichever expires first. * * *

(2) *Absolute.* * * * However, merchandise subject to an absolute quota under this paragraph may not be incrementally released under a special permit for immediate delivery as provided in paragraph (g) of this section. Where a special permit is authorized, a proper entry summary must be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. * * *

* * * * * * *

(g) *Incremental release of split shipments.* Merchandise subject to § 141.57(d)(2) of this chapter, which is purchased and invoiced as a single shipment, but which is shipped by the carrier in separate portions to the same port of arrival due to the carrier's inability to accommodate the merchandise on a single conveyance, may be released incrementally under a special permit. Incremental release means releasing each portion of such shipments separately as they arrive.

(h) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in paragraphs (a), (b), (c), (d), (e), (f) and (g) of this section provided a bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter is on file.

3. It is proposed to amend § 142.22 by removing the first sentence of paragraph (a) and adding in its place the following two sentences to read as follows:

§ 142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery will be made on Customs Form 3461, Form 3461 ALT, or its electronic equivalent, supported by the documentation provided for in § 142.3. A commercial invoice will not be required, except for merchandise released under the provisions of 19 U.S.C. 1484(j). * * *

* * * * * * *

CHARLES W. WINWOOD,
Acting Commissioner of Customs.

Approved: November 7, 2001.

TIMOTHY E. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, November 16, 2001 (66 FR 57688)]

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

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Decisions of the United States Court of International Trade

(Slip Op. 01–128)

BORDEN, INC., GOOCH FOODS, INC. AND HERSHEY FOODS CORP., PLAINTIFFS *v.* UNITED STATES AND U.S. DEPARTMENT OF COMMERCE, DEFENDANTS, AND DELVERDE, SRL AND DELVERDE USA, INC., DEFENDANT-INTERVENORS

Consolidated Court No. 96–08–01970

(Dated November 2, 2001)

RESTANI, *Judge:* As the final results of the redetermination of the Department of Commerce of October 15, 2001, that Delverde, SrL is to be excluded from the antidumping order did not elicit any objection during the relevant remand proceeding, the results are affirmed. The history of this matter is reflected in *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221 (Ct. Int'l Trade 1998), *rev'd in part, Borden, Inc. v. United States*, Nos. 99–1575, 99–1576 (Fed. Cir. March 12, 2001). *See also Borden, Inc. v. United States*, Consol. Court No. 96–08–01970 (Ct. Int'l Trade May 21, 2001) (order).

(Slip Op. 01–129)

FORMER EMPLOYEES OF CREATEC CORP., PLAINTIFFS *v.* U.S. DEPARTMENT OF LABOR, DEFENDANT

Court No. 01–00619

(Dated November 6, 2001)

AQUILINO, JR., *Judge:* The U.S. Department of Labor, Employment and Training Administration, Division of Trade Adjustment Assistance having on March 30, 2001 issued a *Negative Determination Regarding Eligibility To Apply for NAFTA—Transitional Adjustment Assistance* with regard to certain employees of Createc Corporation, Harrodsburg, Kentucky, NAFTA-TAA 4599; and notice of that determination having been published *sub nom.* Dep't of Labor, Employment and Training Admin., *Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance,* 66 Fed.Reg. 22,005, 22,007 col. 2 (May 2, 2001); and one such employee having corresponded with this Court about that determination; and the Clerk having received on July 30, 2001 a letter from that individual, which it deemed as fulfilling in principle the requirements for commencement of the above-numbered action; and the defendant having filed on September 27, 2001 a motion to dismiss this action on the ground of lack of subject-matter jurisdiction in that it was not commenced within the sixty days after notice of such determination prescribed in 19 U.S.C. §2395(a) and 28 U.S.C. §2636(d); and the plaintiffs having failed to respond to this motion; and it not otherwise clearly appearing that earlier correspondence on the record could be deemed timely commencement of this action; Now therefore, after due deliberation, it is

ORDERED that defendant's motion to dismiss this action be, and it hereby is, granted; and it is further

ORDERED, ADJUDGED AND DECREED that this action be, and it hereby is, dismissed.

(Slip Op. 01–130)

SKF USA INC., SKF FRANCE S.A., SARMA, SKF GMBH, SKF INDUSTRIE S.P.A., AND SKF SVERIGE AB, PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND TORRINGTON CO., DEFENDANT-INTERVENOR

Court No. 98–07–02540

(Dated November 15, 2001)

ORDER

TSOUCALAS, *Senior Judge:* This matter comes before the Court pursuant to the decision of the Court of Appeals for the Federal Circuit ("CAFC") in *SKF USA Inc. v. United States*, 263 F.3d 1369 (Fed. Cir. 2001) and CAFC's mandate of October 15, 2001, vacating and remanding the judgment of the Court in *SKF USA Inc. v. United States*, 2000 Ct. Intl. Trade LEXIS 61, Slip Op. 00–59 (CIT June 1, 2000).

Pursuant to said decision by CAFC, this Court hereby

REMANDS this case to the Department of Commerce, International Trade Administration ("Commerce") to: (1) provide a reasonable explanation of why Commerce uses different definitions of "foreign like product" for price purposes and when calculating constructed value; (2) explain the factual setting for the calculations at issue; (3) explain the actual methodology of the calculations made; and (4) explain why Commerce's methodology for the calculations of constructed value profit comports with the statute, the definition of "foreign like product" contained in 19 U.S.C. § 1677(16), and particularly the definition in subsection (C); and it is hereby

ORDERED that the remand results are due within ninety (90) days of the date that this order is entered. Any responses or comments are due within thirty (30) days thereafter. Any rebuttal comments are due within fifteen (15) days after the date the responses or comments are due.

(Slip Op. 01–131)

FAG KUGELFISCHER GEORG SCHAFER AG, FAG ITALIA S.P.A., BARDEN CORP. (U.K.) LTD., FAG BEARINGS CORP. AND BARDEN CORP., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND TORRINGTON CO., DEFENDANT-INTERVENOR

Court No. 99–08–00465

(Dated November 15, 2001)

ORDER

TSOUCALAS, *Senior Judge:* This matter comes before the Court pursuant to the decision of the Court of Appeals for the Federal Circuit ("CAFC") in *FAG Kugelfischer Georg Schafer AG v. United States*, 263 F.3d 1369 (Fed. Cir. 2001) and CAFC's mandate of October 15, 2001, vacating and remanding the judgment of the Court in *FAG Kugelfischer Georg Schafer AG v. United States*, 2000 Ct. Intl. Trade LEXIS 78, Slip Op. 00–80 (CIT July 7, 2000).

Pursuant to said decision by CAFC, this Court hereby

REMANDS this case to the Department of Commerce, International Trade Administration ("Commerce") to: (1) provide a reasonable explanation of why Commerce uses different definitions of "foreign like product" for price purposes and when calculating constructed value; (2) explain the factual setting for the calculations at issue; (3) explain the actual methodology of the calculations made; and (4) explain why Commerce's methodology for the calculations of constructed value profit comports with the statute, the definition of "foreign like product" contained in 19 U.S.C. § 1677(16), and particularly the definition in subsection (C); and it is hereby

ORDERED that the remand results are due within ninety (90) days of the date that this order is entered. Any responses or comments are due within thirty (30) days thereafter. Any rebuttal comments are due within fifteen (15) days after the date the responses or comments are due.

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